



Comment on Proposed Amendments to Maine Rule of Professional Conduct 8.4 and Maine Bar Rule 5

1 message

Michael Martin <mmartin@pmhlegal.com>

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To: "lawcourt.clerk@courts.maine.gov" <lawcourt.clerk@courts.maine.gov>

It is difficult to know where to start with a coherent comment on the proposed amendments to the Maine Bar Rules and the Maine Rules of Professional Conduct on such short notice and when there has been nothing I can find to provide the basis or need for such amendments. I understand there has recently been a survey of the members by the Maine Bar but I cannot find the results. The email asking for comments on the proposed amendments doesn't mention the basis for the amendments.

Has there been a deluge of complaints of instances of harassment and discrimination based on the enumerated specific personal characteristics? If yes, shouldn't we be made aware of the types and frequency of these bad behaviors before the deadline for comment is upon us?. If no, why the proposed amendments?

When a rule is enacted that prohibits harassment and discrimination based on X, Y and Z, does that not implicitly mean or, at least suggest, that harassment and discrimination based on A through W is permissible? Is harassing or discriminating based on an individual's weight, height, hair color, eye color, regional (i.e.. southern or mid-western or Maine) accent, state of origin or dominant hand permissible?

And what does "disregard relevant considerations of individual characteristics or merit....." even mean?

Not only are we being asked to comment on proposed Bar Rule 8.4 without being offered any evidence or even examples of actual or hypothetical bad behaviors which are to be prohibited, we are being asked for comment on a proposed rule requiring mandatory CLE (each and every year) on this undefined and apparently difficult to articulate prohibited conduct.

Ethics rules typically deal with more clearly described misconduct and clearly described prohibitions like fraud, dishonesty and lack of candor to the court. This proposed rule seems to prohibit being rude, boorish and mean, but only to people with certain specified characteristics and only if based on those specifically enumerated personal characteristics. I can't begin to imagine how this will be enforced. Given the vagueness and lack of any meaningful definition of the prohibited misconduct, how are lawyers to discharge their mandated reporting responsibilities (Maine Rule Of Professional Conduct 8.3) for violations of proposed rule 8.4.

It would be helpful if the proponents could provide examples (even hypothetical) of conduct or speech that would not be prohibited by existing rule or statute but would be by the amended rule and, then, explain what the professional discipline would or should be for the lawyer engaging in the conduct that is to be prohibited only by the amended rules. If reasonable hypothetical examples cannot be articulated, then isn't it fair to question the point of the proposed amendments?.

If we are to go down this slippery slope, it should only be after we are given the evidence suggesting the need for the Amendments and the prohibited misconduct is more precisely defined so a reasonable lawyer will understand it.

Thanks for the opportunity to comment.

Michael K. Martin, Esquire

PETRUCCELLI, MARTIN & HADDOW, LLP

Two Monument Square, Suite 900

P.O. Box 17555

Portland, Maine 04112-8555

Telephone: (207) 775-0200 Ext. 6412

Facsimile: (207) 775-2360

E-mail: mmartin@pmhlegal.com

Website: www.pmhlegal.com

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